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Mr. Matthew Josephs
NMTC Program Manager
Community Development Financial Institutions Fund
U.S. Department of the Treasury
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September 19, 2009

RE: NMTC, I.R.C. § 45D New Markets Tax Credit, and I.R.C. § 1211 Limitation on Losses

Dear Mr. Josephs:

I appreciate the opportunity to comment on the New Markets Tax Credit, IRC § 45D, with respect to the notice published in the *Federal Register*, Vol. 74, No. 147, August 3, 2009, FR 38482. I would like to direct my comments and suggestions specifically to items numbered 8, 9, and 10, within the published notice. I offer my comments and suggestions so as to increase the amounts available to those specific groups of persons and those communities. I support the purposes of the New Markets Tax Credit program and would like to provide your office and the Department of the Treasury with a method for expansion of this much needed program. I propose an amendment to I.R.C. § 1211, the limitation on losses for individuals and married taxpayers, and explicit eligibility for I.R.C. § 45D entities and recipients. This amendment will simply permit eligible taxpayers to take there losses. [My proposed amendments to 26 U.S.C. § 1211 are attached.] This will encourage taxpayers to engage in a true market value sales or exchanges of a taxpayer's principal residence, rather than defaulting on their mortgage and passing the losses on to banks, savings and loans, financial institutions, and eventually to state and county tax collectors who will not be able to collect the accruing real estate taxes. Please note the present section has not been amended or even adjusted for inflation since 1954, which was over fifty years ago.

These newly permitted losses from true market value sales or exchanges will encourage people to actually pay their mortgages. Individual homeowners will not be encouraged to walk away from mortgages. The individual homeowners will take their losses, providing assistance directly to the individual taxpayers and home owners, rather than passing the losses on to financial institutions, and eventually on to state and county tax collectors. These proposed changes will permit homes and real estate to be sold and purchased at the true current market values, which may be a downward adjustment in many parts of the country at this time. This will permit people to re-enter the housing market with greatly reduced fears and greatly reduced risks. This will also permit banks and financial institutions to lend at greatly reduced risks. This will result in local and state tax authorities to assess tax rates that will be actually collectible and enable proper budget planning. The benefits are numerous.

I am currently an active member of the State Bar of California (member no. 248363) and have been admitted to the United States Tax Court (no. CD0616). Thank you for your time and consideration. Please feel free to contact me at your convenience. Please see attachment below.

Best regards,

Dean A. Cantalupo, Esq.

26 U.S.C. § 1211. For reference and comparison, the proposed section 1211 amendments are presented below first, (the proposals provide for applicability to NMTC institutions and entities), and then, the present section 1211 is provided following the proposals.

Proposed Amended Statute 26 U.S.C. § 1211 with subsection (b.3) New Markets Tax Credit (NMTC) eligibility:

26 U.S.C. § 1211. Limitation on capital losses.

(a) Corporations. In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) **Other taxpayers.** In the case of a taxpayer other than a corporation, losses from sales or exchanges of **capital assets** shall be allowed only **to the extent of the gains** from such sales or exchanges, plus (if such losses exceed such gains) the lower of--

(1) **\$ 50,000 (\$ 25,000** in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains; **and**

(3) **in the event of remaining unallocated amounts of such net capital loss(es), there shall be allowed to the taxpayer an election to choose the application of subsection (b.2).**

(b.1) **Definitions.** (1) **Loss year.** If a taxpayer has a **net capital loss** for any **taxable year**, for purposes of this section, the taxable year of such loss may also be referred to as the "**loss year**".

(2) **Effective date of amendments.** The effective date of allowance for losses of the amendments to section 1211 starts with **taxable years** ending on June 30, 2005.

(b.2) **Other taxpayers carryover.** If a taxpayer other than a corporation has a **net capital loss in excess of the allowable amount within section 1211(b)(1) [26 U.S.C. § 1211(b)(1)] from the sale or exchange of a capital asset(s) for any taxable year,** a **capital loss carryover to the five taxable years succeeding the loss year,** shall be allowed only **to the extent of the gains** from such sales or exchanges, plus (if such losses exceed such gains) the lower of--

(1) **\$ 50,000 (\$ 25,000** in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(b.3) **Special eligible taxpayers and special eligible entities.** Taxpayers other than a corporation that receive financing or re-financing from entities that are described as one of the following, within the meaning of section 45D [26 U.S.C. § 45D]: "qualified entity investment", "qualified community development entity", "qualified low income community investment", "qualified active low income community business", or "qualified business" shall qualify and benefit from the provisions of this section. For the specific entities listed within this subsection, and within the meaning of section 45D [26 U.S.C. § 45D], such entities which provide financing to taxpayers other than a corporation, that receive financing or re-financing from such entities described as one of the following, within the meaning of section 45D [26 U.S.C. § 45D]: "qualified entity investment", "qualified community development entity", "qualified low income community investment", "qualified active low income community business", or "qualified business", these such entities and communities shall be eligible to benefit from the provisions of this section.

(c) **Other taxpayers principal residence.** In the case of a taxpayer other than a corporation, losses from sales or exchanges of the **principal residence (within the meaning of section 121 [26 U.S.C. § 121] of the tax payer and which is used by the taxpayer as a residence (within**

the meaning of section 280A(d)(1) [26 U.S.C. § 280A(d)(1)] shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of --

(1) \$ 50,000 per tax year, up to a limit of \$ 300,000 allocated on a monthly basis over a period of up to a total of 72 months (\$ 25,000 per tax year, up to a limit of \$ 150,000 allocated on a monthly basis over a period of up to a total of 72 months in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains, and

(3) shall be allocated on a monthly basis to the loss year first in accordance with subsection (e) paragraphs (1) and (2), and then to taxable years succeeding the loss year, allocating the loss to a maximum of 72 months, and

(4) there shall be allowed to the taxpayer an election to choose to allocate such loss(es) according to the application of paragraph (3) of subsection (e).

(5) Loss on taxpayers principal residence. For purposes of this section [26 U.S.C. § 1211], the losses, permitted by this section, on a taxpayer's principal residence shall be permitted by election of the taxpayer to be taken as an ordinary losses.

(d) Other taxpayers deferred pension and retirement accounts. In the case of a taxpayer other than a corporation, losses from sales or exchanges of **tax deferred pension or tax deferred retirement accounts (within the meaning of sections 401, 402A, 404, 407, 408, 408A, 409, [26 U.S.C. §§ 401, 402A, 404, 407, 408, 408A, 409] of the tax payer shall be allowed only to the extent of the gains** from such sales or exchanges, plus (if such losses exceed such gains) the lower of --

(1) \$ 100,000 (\$ 50,000 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(e) Other taxpayers principal residence.

(1) In general. If a taxpayer other than a corporation has a net capital loss within the meaning of section 1211(c) [26 U.S.C. § 1211(c)] from the sale or exchange of a principal residence within the meaning of section 121 [26 U.S.C. § 121] for any taxable year--

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the earliest allowable taxable year(s), and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the current and succeeding allowable taxable year(s).

(2) Treatment of amounts allowed under section 1211(b)(1), or(b)(2), or (b.2)(1), or (b.2)(2).

(A) In general. For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year **an amount equal to the lesser of--**

(i) the amount allowed for the taxable year under paragraphs (1) or (2) of section 1211(b) [26 U.S.C. § 1211(b)], or paragraphs (1) or (2) of section 1211(b.2) [26 U.S.C. § 1211(b.2)]

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income. For purposes of subparagraph (A), the term "adjusted taxable income" means taxable income increased by the sum of--

(i) the amount allowed for the taxable year under paragraphs (1) or (2) of section 1211(b) [26 U.S.C. § 1211(b)], or paragraphs (1) or (2) of section 1211(b.2) [26 U.S.C. § 1211(b.2)] and

(ii) the deduction allowed for such year under section 151 [26 U.S.C. § 151] or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(3) Applicable Taxable Year. If a taxpayer other than a corporation has a **net capital loss within the meaning of section 1211(c) [26 U.S.C. § 1211(c)] from the sale or exchange of a principal residence within the meaning of section 121 [26 U.S.C. § 121] for any taxable year--** (in this section such taxable year may also be referred to as the "loss year"), the amount thereof shall be--

(A) a capital loss carryback allowable to each of the 2 taxable years preceding the loss year, but only applicable to the 2 taxable years preceding the loss year, allocated on a monthly basis, to the period of time the taxpayer actually used the property as a principal residence within the meaning of section 121 [26 U.S.C. § 121], **and**

(B) a capital loss allocated to the loss year, but only applicable to the loss year, allocated on a monthly basis, to the period of time the taxpayer actually used the property as a principal residence within the meaning of section 121 [26 U.S.C. § 121], **and**

(C) a capital loss carryover allowable to each of the 5 taxable years succeeding the loss year, but only applicable to the 4 taxable years succeeding the loss year, allocated on a monthly basis, to the period of time the taxpayer actually used the property as a principal residence within the meaning of section 121 [26 U.S.C. § 121], **and; and**

The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried.

(4) Definition of loss year. If a taxpayer has a **net capital loss** for any taxable year, for purposes of this subsection, the taxable year of such loss may also be referred to as the "**loss year**".

(5) Loss on taxpayers principal residence. For purposes of this section [26 U.S.C. § 1211], the losses, permitted by this section, on a taxpayer's principal residence shall be permitted by election of the taxpayer to be taken as ordinary losses.

(f). Regulations. The Secretary shall be authorized to prescribe such regulations as may be appropriate to carry out the purposes of this section [26 U.S.C. § 1211].

END of PROPOSED AMENDED STATUTE.

Present Statute: 26 U.S.C. § 1211.

26 U.S.C. § 1211. Limitation on capital losses.

(a) Corporations. In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers. In the case of a taxpayer other than a corporation, losses from sales or exchanges of **capital assets** shall be allowed only **to the extent of the gains** from such sales or exchanges, plus (if such losses exceed such gains) the lower of--

- (1) **\$ 3,000** (\$ 1,500 in the case of a married individual filing a separate return), or
- (2) the excess of such losses over such gains.

History: (Aug. 16, 1954, ch 736, 68A Stat. 321; Dec. 30, 1969, P.L. 91-172, Title V, § 513(a), 83 Stat. 642; Oct. 4, 1976, P.L. 94-455, Title V, § 501(b)(6), Title XIV, § 1401(a), (b), 90 Stat. 1559, 1731; May 23, 1977, P.L. 95-30, Title I, § 102(b)(14), 91 Stat. 138; Oct. 22, 1986, P.L. 99-514, Title III, § 301(b)(10), 100 Stat. 2217.)